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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

SINGLE MEMBER APPEAL BRANCH

Appeal No. E/508 /2009 – SM[BR]

Date 15/12/2010

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S H.P.L.SOCOMEC PVT. LTD.

132-133 PACE CITY I, SECTOR-37, GURGAON.

M/S H.P.L.SOCOMEC PVT. LTD. Appellant

Vs

C.C.E. DELHI III Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1431 / 2010-SM[BR] dated 18.10.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E. DELHI III
   UDYOG MINAR, UDYOG VIHAR, VANIJYA NIKUNJ, PHASE V, GURGAON - 122016 (HARYANA)
2. Adv. / Consult
   MR.D.N. MALHOTRA
   18, SHIVPURI, SAINT MICHEAL, HIGH SCHOOL ROAD, GURGAON-122001.
3. S.D.R
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.IV

E/Appeal No.508/09-SM

(Arising out of order in appeal No.257/ANS/GGN/2008 dated 20.11.08 passed by the Commissioner of Central Excise (Appeals), Delhi-III)

Date of Hearing: 18.10.2010

For approval and signature:

Hon'ble Shri Ashok Jindal, Member (Judicial)

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1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982?

2. Whether it should be released under Rule 27 of the CESTAT(Procedure) Rules, 1982 for publication in any authoritative report or not?

3. Whether Their Lordships wish to see the fair copy Of the order?

4. Whether Order is to be circulated to the Departmental Authorities?

M/s H.P.L Socomec Pvt Ltd — Appellants

Vs

CCE, Delhi-III — Respondent

Appeared for the Appellant: Shri D.N. Malhotra, Advocate
Appeared for the Respondent: Shri S.K. Bhaskar, SDR

Coram: **Hon'ble Shri Ashok Jindal ,Member (Judicial)**

Final ORDER 1431/2010 SM(BR)

Per Ashok Jindal:

The appellant has filed this appeal against the demand of differential Cenvat credit availed by them on purchase of capital goods which were cleared and duty was paid on the said capital goods.

2. The facts of the case are that the appellants purchased DG sets in the year 2001 and availed Cenvat credit as capital goods on the invoice price. After using for 5 years, in the year 2006, the appellant removed these DG sets and paid the duty on the transaction value on these DG sets. A show cause notice was issued to the appellants under Rule 3(5) of Cenvat credit Rule, 2004 asking them to pay the differential duty (duty of credit availed at the time of) as the capital goods has been removed as such. Both the authorities below confirmed the demand alongwith interest and penalty on the appellant. Aggrieved from the said order, the appellant is in appeal before this Tribunal.

3. The learned Advocate for the appellants submitted that they have used these capital goods for five years and thereafter, they removed these capital goods and same cannot be treated as new capital goods. He also submitted that in similar set of facts, this Tribunal in the case of Cummins India Ld Vs Commissioner reported in 2007 (219) ELT 911) wherein it has been held that the capital goods which were removed after putting into the use, the duty is payable on transaction value on removal of such capital goods. Same view was confirmed by Hon'ble Bombay High Court in case of reported in 2009 (234) ELT A-120). Hence the impugned order is liable to be set aside.

4. On the other hand, the learned DR reiterated the impugned order.

5. Heard both the sides. After hearing both the sides, I find that the [redacted] issue in this case whether the appellant is liable to pay the differential duty on the capital goods removed after using for five years in their factory or not. This issue has already been settled by

the Bombay High Court in the case reported in 2007 (219) ELT 911 wherein it was held that duty is payable on capital goods which were cleared after putting into use, the duty shall be paid on transaction value only. Hence following the said ratio in this case also, I hold that duty has been paid on transaction value and differential duty asked to pay is not ~~payable~~ by the appellants. Accordingly, the impugned order is set aside. The appeal is allowed with consequential relief, if any.

(ASHOK JINDAL)
Judicial Member

MPS*